

essential reading for
financial firms and
consumer advisers



about this issue

It is an implied term of the contract between customers and their banks and building societies that these firms will keep their customers' information confidential.

But from time to time, mistakes happen and details that should have remained secret are somehow revealed.

On page 3 of this issue of *ombudsman news* we explain our general approach to complaints involving a bank's breach of customer confidentiality. Sometimes, a bank's mistake causes little or no real damage. However, as our case studies show, there are times when a very minor clerical error can result in customers suffering serious business losses – or even being left in fear for their lives.

On page 11 we feature an extract from our recently-updated publication – *a guide for complaints handlers*. The extract sets out what happens here at the ombudsman service when we receive a complaint against a firm. ❖

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edited and designed by the publications team at the Financial Ombudsman Service

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In the first of an occasional series, *ombudsman facts*, on page 10, we set out a few key facts about the board of the Financial Ombudsman Service.

Finally, on the inside back cover we give details of our latest series of conferences for firms. Aimed primarily at financial services practitioners and based in various centres around the UK, these conferences focus on:

- current complaint topics,
- the handling of complaints; *and*
- the ombudsman process.

Places are filling up quickly, so prompt booking is recommended.



services for firms and consumer advisers

our **external liaison team** can

- provide training for complaints handlers
- organise and speak at seminars, workshops and conferences
- arrange visits

phone **020 7964 1400**

email liaison.team@financial-ombudsman.org.uk

contact our **technical advice desk** for

- information on how the ombudsman service works
- help with technical queries
- general guidance on how the ombudsman might view specific issues

phone **020 7964 1400**

email technical.advice@financial-ombudsman.org.uk

phone **0845 080 1800**

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website www.financial-ombudsman.org.uk

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the banker's duty of confidentiality to the customer

It is an implied term of the contract between customers and their banks and building societies that these firms will keep their customers' information confidential. This confidentiality is not just confined to account transactions – it extends to all the information that the bank has about the customer.

But from time to time, mistakes happen and – for whatever reason – banks end up releasing information that they should have kept secret. Sometimes, the resulting breach of confidentiality is little more than technical (in other words, nothing really flows from it), but occasionally it can have major consequences.

This article explains our general approach to complaints involving a bank's breach of a customer's confidentiality, and illustrates how we look to resolve them.

the *Tournier* principles

First of all, a banker's duty of confidentiality is not absolute. The 1924 case of *Tournier v National Provincial and Union Bank of England* sets out four areas where a bank can legally disclose information about its customer. These principles still hold good today and are:

- where the bank is compelled by law to disclose the information
- if the bank has a public duty to disclose the information
- if the bank's own interests require disclosure; *and*
- where the customer has agreed to the information being disclosed.

If we decide that a bank disclosed information under one or more of these circumstances, then we are unlikely to interfere. But most of the complaints we receive involve situations where the bank should not have disclosed information – because none of the *Tournier* principles applied.

liability

If a bank discloses information about a customer in any circumstances other than those described above, then it has acted wrongly and should, as a general rule, be held liable for the reasonably foreseeable consequences of its action. Some banks seem to think it should make a difference if they disclosed the information by accident – but it does not. If a bank's carelessness leads to a breach of confidentiality, that does not diminish the fact that the bank acted in breach of a fundamental duty it owed to its customer.

It is relatively rare for us to come across a case where information was disclosed deliberately. Mostly, it happens by accident. ❖

... a banker's duty of confidentiality is not absolute.

... simple clerical errors have led to serious business losses.

consequences of a breach of confidentiality

Customers rightly expect high standards from their banks and building societies. So if they discover that their private information has been wrongly divulged to someone else, they can become very unhappy – even if the disclosure has resulted in little more than minor frustration or embarrassment.

But even a minor mistake by a bank can lead to significant problems – particularly if the customer is running a business. We have seen cases where simple clerical errors have led to serious business losses.

The important point here is for the bank to look at the consequences of its actions for the customer – and to distinguish clearly between ‘loss’ and ‘distress and inconvenience’. All too often we find that banks fail to do this properly. Even where they accept they have done something wrong, they often try to settle the matter by offering the customer some money without first assessing either:

- whether the customer has experienced a true (and reasonably foreseeable) financial loss; *or*
- the real extent to which the customer has suffered distress, embarrassment, or inconvenience.

loss

Both banks and customers need to take a realistic look at any real losses resulting from the bank’s breach of confidentiality. The bank should generally be liable for losses that it could reasonably have foreseen when it disclosed the information.

In our experience, banks regularly fail to pay proper attention to the true costs that customers can incur as a direct result of the breach of confidentiality. The key, therefore, is for both parties to analyse and understand the true effects of the bank’s actions.

distress and inconvenience

Occasionally, customers who have experienced minimal or no financial loss feel that their ‘good name’ has been ‘irreparably damaged’ by what has happened. They may go on to claim large sums of money as compensation, perhaps quoting high-profile court cases. However, we take a more balanced view.

In exceptional circumstances we might award compensation of some hundreds of pounds for significant breaches of confidentiality. But any compensation we award is generally far more modest. Minor mistakes will warrant little more than a nominal payment, if any.

When assessing compensation for distress and inconvenience we follow the approach outlined in *awards for non-financial loss*, available on our website (www.financial-ombudsman.org.uk) listed under ‘technical briefing notes’.

case studies: the banker's duty of confidentiality to the customer

■ 45/1

When Mrs K moved house she wrote to her bank giving details of her new address. The following month, the bank sent her account statement to her new next-door neighbour because it had misread the handwriting on her letter. After opening the envelope by mistake, the neighbour called round to Mrs K's house right away to apologise and give her the statement.

Mrs K then complained to her bank, saying that she had been '*acutely embarrassed*' in front of her new neighbour – particularly since the statement had shown that she was overdrawn (after having to pay all the costs of moving house).

Mrs K demanded an apology from the bank's chairman, together with '*a written assurance*' that such a mistake would never happen again, and compensation of £5,000, which she said was to help her get over the '*trauma*' of having to face her new neighbour every day now that the neighbour knew her '*financial secrets*'.

The bank offered Mrs K £50. Rejecting this as an '*absolute insult*', Mrs K came to us.

complaint rejected

By the time the complaint was referred to us, the bank had been in touch with the neighbour, who said she had not looked at the statement in any detail, and certainly couldn't remember what it said. In fact, she said she felt embarrassed by having mistakenly opened a letter that had not been addressed to her.

We decided that Mrs K had not suffered any financial loss as a result of the incident, and that she was very much over-playing her claim. We felt that the bank's offer had been sufficient and after we explained this to her, we heard nothing more.

■ 45/2

Miss J lived with her partner, Mr C, who had occasionally been violent towards her throughout their relationship. After he lost his job and started drinking heavily, the violence became so much more frequent and more damaging that Miss J felt she was in serious danger.

One night when Mr C was out, Miss J left home and moved into a rented flat.

First thing the following morning, she went to her bank to change the address on her accounts. She explained why she had moved, and said that under no circumstances should the bank tell Mr C where she now lived. ❖

Mrs B told the bank what was happening, and asked it to keep her new address confidential. But the bank let slip the new address – this time by sending a copy of the ‘*confirmation of new address*’ form to Mrs B at her old address. Mrs B found out what had happened when her husband forwarded the bank’s letter on to her.

As a result of the bank’s mistake, Mrs B was once again in fear for her own safety and that of her daughter. She made hasty arrangements for another move – to a different town, further away. Luckily, her husband did not find out her new address – so neither she nor her daughter suffered further physical harm. However, Mrs B sent the bank a claim for all the additional costs she had incurred in uprooting herself and her daughter once again.

The bank accepted its fault in wrongly letting Mr B know her new address. However, it did not accept liability for the losses Mrs B had claimed for. Instead, it simply offered her £500, to reflect the inconvenience she had been caused. Mrs B then came to us.

... as a result of the bank’s mistake, Mrs B was once again in fear for her own safety.

complaint upheld

We did not think the bank’s offer was good enough. We felt that, as a result of the bank’s error, Mrs B had incurred costs that were reasonably foreseeable and that the bank should therefore reimburse. These included:

- removal costs
- ‘changeover’ costs for utility services (gas, electricity *etc*)
- the difference between the rent on the old flat and the rent on the new flat for the 6-month period of the assured shorthold tenancy that Mrs B had taken out; *and*
- the cost of a new school uniform for her daughter.

This all came to £1,000. So in addition to the ‘inconvenience’ offer of £500 (which we thought was about right) we suggested that the bank should settle the complaint by paying a total of £1,500, which it agreed to do.

45/4

The business that Mr L ran was in financial trouble. In June 2003, he took out a £20,000 personal loan from the bank to try to shore things up. Mr L told the bank that he wanted all the paperwork for the loan to be sent to his business address, as he didn’t want his wife to know what was happening. The bank agreed. ✪

... the bank accepted, right from the start, that it had acted wrongly.

Unfortunately, the business did not improve over the next year, and Mr L had difficulty in keeping the loan repayments up to date. Eventually the bank transferred the loan to its debt recovery department, where a new manager decided to phone Mr L at home one afternoon to talk about repaying the debt. Mr L was out at work but his wife answered the phone. The manager left a message with Mrs L, asking her husband to *'get in touch with the bank as soon as possible about the £20,000 loan that is in default'*.

When Mr L returned home he had to explain everything to his wife. He later said that all of his wife's trust in him *'after 40 years of happy marriage, was wiped out in one go'*. Mr L complained to the bank about what it had done, and claimed £20,000 compensation – enough to pay off the loan and leave a little left over.

The bank accepted, right from the start, that it had acted wrongly. Initially it offered Mr L £1,000. When Mr L turned this down it quickly increased its offer to £2,000. But Mr L felt this was still not enough and he came to us.

complaint rejected

We thought that the offer of £2,000 was not only fair but rather generous, given the overall circumstances. We encouraged Mr L to accept it and he eventually did so, but not before telling us that we were wrong to have *'undervalued'* his marriage *'such that each of the 40 happy years was worth only £50'*.

.....

■ **45/5**

Mr A ran a small but growing business from premises he leased from P Ltd. He asked the bank to address bank statements for his business account in the following way:

Mr A, trading as 'A Products'
c/o P Ltd
High Street
Country Town.

The bank agreed to do this, but on one occasion it made a mistake and sent one of the statements to:

P Ltd
High Street
Country Town.

The statement was delivered to, and opened by, P Ltd – who used the same bank as Mr A. P Ltd saw that Mr A had a large overdraft. Since Mr A was a month behind with his rent, this information caused P Ltd to send in the bailiffs. The seizure of Mr A's stock, and the knock-on effect in a small business community, caused Mr A's business to fail.

Mr A had only asked for the bank statement because he knew he was behind with the rent and wanted to check on his account to see how best he could bring his rent payments up to date. The overdraft had come about because his business had been growing very quickly and he was waiting for a large number of invoices to be paid.

When the bank declined any responsibility for the consequences of its mistake, Mr A come to us.

complaint upheld

In our view, P Ltd's action was precipitate – and it was caused solely by the bank's breach of confidentiality towards Mr A. We recognised that it was a small, and accidental, clerical slip by the bank. But we also thought that the possible consequences of its action were reasonably foreseeable and had been very damaging. We therefore required the bank to pay Mr A compensation of just over £40,000.

■ **45/6**

Mr N was barely on speaking terms with his sister, Mrs G, because of their differing views as to how they should look after their elderly widowed mother. Mr N wanted his mother to move to an expensive nursing home, while Mrs G wanted to leave their mother at home and to arrange for a neighbour to call in each day to check on things.

Eventually, Mr N decided to go ahead and move his mother to the nursing home. Mrs G refused to pay when he asked her to contribute half of the costs, so Mr N and his wife arranged to go to a solicitor to try to force her hand.

Mrs G had a savings account at the branch of the building society where Mrs N worked. Mrs N decided to check how much money Mrs G had in this account. She then told the solicitor – who used the information in correspondence. When Mrs G discovered what the solicitor knew, she challenged her sister-in-law – who admitted how she had obtained the information.

Miss G complained to the building society about what her sister-in-law had done. However, the society said this was a private family matter. Mrs G then referred the complaint to us.

complaint upheld

After our intervention, the society accepted that Mrs N's actions had breached Mrs G's confidentiality. Mrs N had also broken her contract of employment.

The society decided to offer Mrs G £500. In response, she asked for £1,000. We were eventually able to mediate a settlement at £800.

**... we required the bank
to pay compensation of
just over £40,000.**

the board of the financial ombudsman service



Chairman of the Financial Ombudsman Service,
Sir Christopher Kelly KCB

- The Financial Ombudsman Service reports to a board of non-executive directors, chaired by Sir Christopher Kelly KCB.
- The board members have no involvement in individual complaints. Their job as public interest directors is to take a strategic overview of the service.
- They ensure we are properly resourced and able to carry out our work effectively and independently – free from any control or influence by those whose disputes we resolve.
- The directors are appointed by the Financial Services Authority (FSA) under the Financial Services and Markets Act 2000. The chairman of the board is appointed by the FSA with the approval of HM Treasury.
- You can find more information, including details of the individual board members, on our website [www.financial-ombudsman.org.uk]. Look under ‘*research information*’ in the section headed ‘*frequently asked questions*’.



These pictures were taken at a recent meeting of our board



a guide for complaints handlers

This is an extract from our recently-updated publication, *a guide for complaints handlers*.

This guide is intended mainly for people working in the parts of firms – such as compliance units and customer service departments – that deal regularly with complaints and the ombudsman service.

For further information, look on the publications page of our website (www.financial-ombudsman.org.uk).



if a complaint comes to us – what we do

receiving complaints

The staff in our customer contact division deal with all front-line consumer enquiries. They provide general advice and guidance for consumers on what to do if they have a complaint about a financial service or product.

We encourage consumers to bring their complaint to you – the firm – in the first instance. Where consumers complain to us before you have had the opportunity to put things right, our customer contact staff will refer the complaint on to you.

If you can resolve the complaint to the consumer's satisfaction at this stage, we will have no further involvement in the case. But if the consumer remains dissatisfied, they can ask us to look into their complaint if:

- you have already sent them your final response letter (and the consumer brings their complaint to us within six months of the date of that letter); *or*
- the eight weeks that apply have passed – and you have been unable to send your final response letter. ...

First, the consumer will need to complete our complaint form. This is available on our website at www.financial-ombudsman.org.uk/consumer/complaints.htm – or by phoning us on **0845 080 1800**. We can help by talking consumers through the form over the phone. We will then complete as much of the form as possible, and send it to them to check and sign. People who find completing forms difficult often prefer this approach. It is also more efficient for us, because we can encourage people to stick to the key facts.

Our customer contact staff check that returned complaint forms have been properly completed and signed. Where it is immediately obvious that a complaint is one that we cannot or should not deal with, we explain this to the consumer.

Our customer contact staff also look for opportunities to nip straightforward problems in the bud. For example, where a problem stems from a simple administrative error or misunderstanding between the customer and the firm, we might be able to sort matters out right at the start. Otherwise, our customer contact division acts as the ‘gateway’ to our teams of adjudicators. A complaint that is passed on to one of our adjudicators will become a ‘chargeable’ case and a case fee will be invoiced to your firm when the case is closed.

handling cases

The procedural approach we take to resolving complaints depends on the facts and merits of each individual case. We decide the way forward that we think will be the most appropriate in the circumstances.

Generally, our approach will involve mediation or conciliation. This is the informal way we resolve the majority of complaints that consumers bring to the ombudsman service, and it can be quicker and more efficient than a formal investigation.

We can often come up with a solution that satisfies both sides, just by taking a fresh look at the facts and identifying and agreeing the key issues as we see them. So our informal approach may involve us contacting you by phone to suggest a way forward. We will confirm our position in writing if we are unable to resolve the matter over the phone, or where the nature of the case makes a written explanation more appropriate.

In some of our more complex cases, the adjudicator may seek to resolve the dispute by issuing an adjudication report. This is a formal document, setting out the details of the dispute, the findings of the adjudicator and any redress that the adjudicator considers appropriate. The report is sent to both parties at the same time, and the firm and the consumer are each given an opportunity to respond.

When we look at complaints, our approach is to decide what we believe is fair and reasonable in the circumstances of each particular case. This includes taking into account relevant law, codes of practice, and regulatory rules and guidance. Where the two sides of the story seem to be at odds, or the evidence is contradictory, we make decisions on the basis of what we believe is most likely to have happened on the balance of probability. We are not bound by legal precedent, but we aim to be consistent in the approach we take to particular types of complaint.

Our monthly newsletter, *ombudsman news*, gives regular feedback on our approach to different types of complaint – and provides commentary, briefing and case studies which many firms find a useful source of reference. We also publish technical briefing notes on a range of matters.

All our publications are available online on our website. The ‘search’ facility on the website can be especially helpful if you are trying to track down how we may have handled a similar type of case in the past.

You can also contact our technical advice desk for general guidance on how the ombudsman might view specific issues – or just for more information about how the ombudsman service works. (Details of this and other services we provide for firms are on the front inside cover of this newsletter.)

ombudsman decisions

In most cases, both sides accept the adjudicator’s findings and the complaint is then settled. But if either the consumer or the firm do not understand any part of the procedure – or do not agree with the findings of the adjudicator – they should contact the adjudicator in the first instance. If matters remain unresolved, either the firm or the consumer may ask for a review and final decision by an ombudsman. This only happens in about one in ten cases.

Where the ombudsman becomes directly involved in a case at this stage, he or she will first carry out an independent review of the complaint before issuing a final decision.

If the consumer accepts an ombudsman’s decision within the time limit specified by the ombudsman, both the consumer and the firm are bound by the decision. Otherwise, the firm is not bound – but the consumer remains free to take court proceedings against the firm.

A final decision by an ombudsman is the end of our complaints-handling process. Neither the firm nor the consumer can appeal against an ombudsman’s decision by going to another ombudsman.

complaints about our service

We have a separate procedure for complaints about the way in which we have handled a case – for example, complaints that there may have been unreasonable delay. This complaints procedure is open both to firms and to consumers. The procedure involves a review of how we have handled a case – it is not a way of challenging the actual decision itself. This procedure can involve a final review by our Independent Assessor. You'll find more information about our complaints procedure in our leaflet, *our service standards*, which is available on our website (www.financial-ombudsman.org.uk/publications/index.htm).

complying with an ombudsman decision

The FSA's rules require the firm to comply promptly with an ombudsman decision (as well as with any settlement that may have been agreed earlier in the process). If necessary, the consumer can go to court to enforce the ombudsman decision.

guides to the ombudsman service

We have produced two guides to help financial services firms find out more about us and our processes.

■ *a guide for complaints handlers*

This is a detailed guide designed for people working in the parts of firms that deal regularly with complaints and the ombudsman service, such as compliance units and customer service departments.



■ *an introduction to the Financial Ombudsman Service*

This is a brief guide designed for those firms that don't generally have much contact with us.



Both publications are available on our website (www.financial-ombudsman.org.uk).

You can order copies of these publications, free of charge, by emailing publications@financial-ombudsman.org.uk

our 2005 series of conferences for firms

This year we are again running a series of conferences in various centres around the UK, focusing on current complaint topics, the handling of complaints and the ombudsman process. Aimed primarily at financial services practitioners, the conferences feature:



- presentations by our ombudsmen and senior adjudicators
- discussion groups and case studies
- first-class conference venues
- refreshments, including a hot buffet
- value for money – we run these conferences on a not-for-profit basis, charging just £125 + VAT per delegate, to cover our costs.

Places are limited and are filling up quickly. Book promptly to avoid disappointment.

For more information and a booking form see our website www.financial-ombudsman.org.uk or complete this form, ticking the conferences(s) you are interested in, and send it (or a photocopy) to ...→

Kerrie Coughlin, communications team
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name(s)	<input type="text"/>	office address	<input type="text"/>
firm	<input type="text"/>		
phone	<input type="text"/>		
email	<input type="text"/>		

please tick

<input type="checkbox"/>	12 May	IFAs, mortgage and insurance intermediaries	The Brewery, Chiswell Street, London EC1
<input type="checkbox"/>	30 June	IFAs, mortgage and insurance intermediaries	Weetwood Hall, Leeds
<input type="checkbox"/>	13 July	life, investment, banking and Insurance firms	Belfast
<input type="checkbox"/>	6 October	life, investment, banking and Insurance firms	Glasgow
<input type="checkbox"/>	27 October	banking firms	Barbican Conference Centre, London
<input type="checkbox"/>	10 November	insurance firms	Barbican Conference Centre, London
<input type="checkbox"/>	1 December	life and investment firms	Barbican Conference Centre, London

ask ombudsman news

preferential treatment? *a firm of solicitors emails ...*

Q We represent a private client who is in dispute with a financial firm. We are minded to recommend that our client take her case to the ombudsman service – primarily because we understand the ombudsman handles cases in private. Our client, who is in the public eye, doesn't want the publicity of going to court. However, we are anxious to have the matter expedited – would our client's special status help prioritise her case with the ombudsman?

A Given the large volumes of mortgage endowment complaints we are currently receiving, most cases take between six and nine months for us to resolve. However, we consider requests to prioritise cases where the consumer might clearly be disadvantaged by having to wait – for example, through financial hardship or for medical reasons.

No such reasons appear to apply in your client's case. And we don't put complaints to the top of the queue just because of who the parties involved are. We make decisions on the individual facts and circumstances of a case – not on how 'important' either side is or how 'professionally' they argue their case.

Similarly, we don't prioritise cases – or handle them any differently – should either party involve the press. We recognise that the firm or consumer may choose to tell their side of the story to others, including the media. But we will not divulge publicly any personal or sensitive details about an individual ❖

complaint – or discuss a specific case in public – because we are a private dispute-resolution service and we handle complaints in confidence.

cross-border complaint

Q I'm a UK citizen living and working in Europe. I'm in dispute with my bank. Can I bring my complaint to the Financial Ombudsman Service or do I need to go to a European equivalent?

A Whether you can bring your complaint to us depends on where your bank is based – not on your own nationality or on where you currently live.

We cover firms that provide financial products and services in or from the UK. If your complaint is against an overseas firm, you may be able to get help from an equivalent complaint-handling body. You can check online at <http://finnet.jrc.it/en/> to see if there is an ombudsman scheme, or some other complaint-handling body, that covers the relevant area of financial services in the European country where you live.

There are arrangements between the complaint-handling bodies in Europe to help consumers complain to the relevant overseas scheme. If you don't have internet access or if you experience difficulties contacting another scheme, let us know and we will try and help.

ombudsman news is published for general guidance only. The information it contains is not legal advice – nor is it a definitive binding statement on any aspect of the approach and procedure of the ombudsman service.